The State Flexibility Act

The State Flexibility Act was introduced in response to bipartisan requests from governors not to impose the Medicaid Maintenance of Effort (MOE) requirements on states. The legislation would fully repeal these onerous regulations and allow states to take responsible, common-sense steps to balance their budgets and simultaneously lower federal entitlement spending. According to Congress' non-partisan budget-scorekeeper, the Congressional Budget Office (CBO), the State Flexibility Act will save federal taxpayers $2.8 billion through 2016 and $2.1 billion over 10 years.

The bicameral legislation was introduced in the Senate by U.S. Senator Orrin Hatch (R-Utah), Ranking Member of the Senate Finance Committee and in the U.S. House of Representatives by U.S. Reps. Phil Gingrey (R-Ga.), Member of the House Energy and Commerce Committee and Cathy McMorris Rodgers, House Republican Conference Vice Chair.

The Medicaid program has historically been a partnership between states and the federal government where States could manage their enrollment in a way that meets the needs of their citizens and keeps their budgets balanced. However, the 2009 stimulus bill required states with Medicaid programs in effect on July 1, 2008, to maintain their programs with the same eligibility standards, methodologies, or procedures through June 30, 2011. The Patient Protection and Affordable Care Act (PPACA) went on to expand the Medicaid MOE provision requiring states with Medicaid programs in effect on March 23, 2010, to maintain their programs through 2013. Additionally, the MOE for children up to age 19 continues until September 30, 2019, although funding for the State Children's Health Insurance Program expires in 2015. Failure to comply with the new health law's MOE requirements means a state risks losing all of its federal Medicaid matching funds. These restrictions prohibit states from implementing even common-sense enrollment modernizations.

The State Flexibility Act would repeal the three current onerous Medicaid MOE restrictions that are in effect and restore the longstanding partnership between the federal government and the states.

Original Co-sponsors of the bill include: U.S. Senators Lamar Alexander (R-Tenn.); John Barrasso (R-Wyo.); Richard Burr (R-NC); Tom Coburn (R-Okla.); John Cornyn (R-Tex.); Mike Johanns (R-Neb.); Jon Kyl (R-Ariz.); and U.S. Reps. Joe Pitts (R-Pa.) and Fred Upton (R-Mich.), Chairman of the House Energy and Commerce Committee.

BACKGROUND:

The 2009 economic "stimulus" package and the Patient Protection and Affordable Care Act (PPACA) imposed new Medicaid eligibility restrictions on the states called "maintenance of effort" (MOE) requirements. This lack of flexibility makes it especially challenging for states to solve unprecedented state budget crises, and governors have asked Washington for relief from these excessive constraints. For example, when the Commonwealth of Virginia tried to limit the abuse of taxpayer dollars through financial instruments purchased for the purpose of sheltering assets and estate planning, the MOE restrictions prevented the state from doing so. Similarly, the state of Oregon has a 20 percent Medicaid eligibility improper payment rate, but the MOE restrictions prohibit the state from updating its eligibility determination procedures to correct this problem.

The *Washington Post* recently noted that states are facing "the most severe budget crisis since the Great Depression."

- The National Governors Association reports that states are facing a collective $175 billion budget shortfall through 2013. The *Washington Post* reports that California alone has a $25 billion budget gap to close.
- Yet Washington has tied the hands of states in dealing with Medicaid, which consumes on average 22 percent of state budgets, according to a Fiscal Survey of the States .

While Washington has previously bailed out states with additional Medicaid spending, Washington simply doesn't have the money to do it again.

- Washington has sent approximately $103 billion to bail out state Medicaid programs over the past 2 years, but Washington simply does not have the money to do it again.
- Washington is facing an unprecedented $14 trillion national debt and a $1.6 trillion budget deficit.
- In fact, the bipartisan National Governors Association recently stated, "Despite states' difficult fiscal situation, governors are not calling for new one-time help from the federal treasury. In fact, we encourage the federal government to follow the lead of states and make the tough decisions necessary to get its fiscal house in order; federal fiscal stability is critical to the long-term strength of states and the country."

This time around, states are simply asking for relief from federal mandates to better manage their Medicaid programs.

- The *New York Times* outlined states' limited options, "But because of the federal eligibility restrictions, the options for states are largely limited to cutting benefits that are not federally required; reducing payments to doctors, hospitals and nursing homes; and raising taxes on those providers."
- As reported by the *Washington Post*, some states are being forced to consider cuts of 20% to higher education.
- In January, Republican governors sent a letter stating, "In these difficult fiscal times, we understand that the federal government cannot provide new sources of taxpayer dollars to assist the states. Therefore, our only option is to request flexibility and relief from MOE provisions so that we may responsibly manage our state budgets on behalf of our citizens."[1]
- While Secretary Sebelius acknowledged the problems states are facing in a letter to governors on February 3, 2011; unfortunately, the letter simply restated the limited options available under current law. To quote Governor Haley Barbour, "Secretary Sebelius's letter fails to provide solutions that immediately address the exploding state budget problems posed by the Medicaid program."

[1] See the RGA letter for state specific "fast facts" about the impact of the Medicaid program restrictions.